

Exhibit No. 9Date 3-30-09Bill No. HB3**Testimony of Timothy C. Fox before the Montana Senate Finance and Claims Committee, on****House Bill 3****March 30, 2009**

Good morning Mr. Chairman and members of the Committee. My name is Tim Fox. I am a Partner with Helena law firm Gough Shanahan Johnson & Waterman.

I appear before you today at the request of my clients, Pastor B.G. Stumberg and Canyon Ferry Road Baptist Church of East Helena, Inc., to ask that the Committee amend House Bill 3 to add a supplemental appropriation for the Commissioner of Political Practices in the amount of \$225,000. Senator Dave Lewis has agreed to sponsor this amendment.

The supplemental appropriation is necessary to pay the attorneys' fees and costs incurred by Pastor Stumberg and his Church in bringing a lawsuit against the Montana Commissioner of Political Practices in U.S. District Court under the Federal Civil Rights Act, specifically 42 U.S.C. Section 1983, and other applicable laws. The lawsuit alleged that Pastor Stumberg's and the Church's constitutional rights were violated when the Commissioner of Political Practices, acting on a complaint brought by a political action committee called "Montanans for Families and Fairness," investigated the Pastor and the Church for allegedly failing to file and report as an incidental political committee during the petition signature drive to place a constitutional initiative, CI-96, commonly referred to as the "Montana Marriage Amendment," on the ballot in 2004.

The Commissioner eventually ruled that the Pastor and Church had violated Montana campaign finance laws by not filing as an incidental political committee, and by not reporting its expenditures.

The Pastor and Church filed their lawsuit in June of 2004 with the legal assistance of the Alliance Defense Fund, a Christian law firm based in Scottsdale, Arizona, and my law firm. The Commissioner, through the Montana Department of Justice, defended the lawsuit as they are required to do when Montana laws are challenged in court. After lengthy discovery, briefing, and hearings, the U.S. District Court ruled in the Commissioner's favor in September of 2006. The Pastor and the Church then appealed the decision to the U.S. Court of Appeals for the Ninth Circuit.

On February 26, 2009 after lengthy briefing and oral argument in Seattle last summer, the Ninth Circuit Court issued its opinion finding that the Pastor and Church's First Amendment Free Speech rights and Fourteenth Amendment Due Process rights had been violated when certain Montana statutes and rules were applied by the Commissioner.

Under the applicable Federal laws involved in this lawsuit, specifically 42 U.S.C. Section 1988(b), litigants who prevail on claims under the Civil Rights Act are entitled to petition the Federal Court for reimbursement of attorneys' fees and costs. We have been negotiating the amount of the fees and costs that should be paid by the State with the Department of Justice's Solicitor, Mr. Anthony Johnstone, who represented the Commissioner in the Federal litigation.

In the spirit of compromise, and to save the State some money, we thought it best to bring this matter before the Committee at this time so an appropriation could be made to pay these fees and costs. If an appropriation is not made at this time, the State risks incurring substantial interest charges over time, and additional fees and costs.

My clients have provided itemized fee and cost schedules to the Attorney General's office in furtherance of this request. These schedules were also provided to the Legislative Fiscal Analyst's office along with copies of the Ninth Circuit Court's opinion and the U.S. District Court's judgment in favor of my clients after remand of the case from the Ninth Circuit Court.

I want to thank Mr. Johnstone, Commissioner Unsworth, and the Attorney General's office for acting in good faith and with promptness after receiving short notice of our intent to bring this matter before this Committee. Mr. Johnstone personally reviewed hundreds of pages of fee and cost schedules in just two days and sacrificed this past weekend to advocate for the State's interests.

I am happy to report to the Committee that the parties have reached an agreement to set the fees and costs in this case at \$225,000, which is a substantial reduction in the amount potentially recoverable by my clients if the parties had decided to litigate the amount in the Federal District Court. This settlement is conditioned on the Legislature making this supplemental appropriation in House Bill 3, the Governor signing House Bill 3 with this appropriation, and payment of the sum of \$225,000 as soon as possible, but in any event by no later than July 1, 2009. If the payment is not made by July 1, 2009, my client reserves the right to petition the U.S. District Court for recovery of the full amount of fees and costs it has incurred in the litigation, together with interest and future fees and costs.

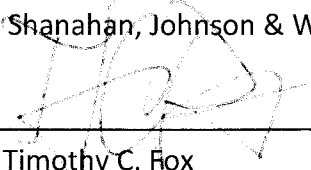
If the supplemental appropriation is authorized, the parties would file the necessary papers with the U.S. District Court to stipulate to the agreed payment. The Court would then order that the payment be made. Once the payment is made in full, my client would file the necessary paperwork to reflect that the State's liability for fees and costs has been satisfied.

In closing, my clients respectfully request that the Committee amend House Bill 3 to add a supplemental appropriation for the Commissioner of Political Practices to pay the sum of \$225,000 to Plaintiffs for their fees and costs incurred in the case of Canyon Ferry Road Baptist Church vs. Montana Commissioner of Political Practices.

Thank you for your time and consideration, and I would happy to attempt to answer any questions you may have. I believe that Mr. Johnstone would like to appear and speak on behalf of the Commissioner and his office.

Respectfully submitted this 30th day of March, 2009

Gough, Shanahan, Johnson & Waterman, PLLP

By  _____
Timothy C. Fox

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